

22 JAN 2008



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In re Application of	:	
KLOKKERS et al.	:	
Application No.: 10/577,569	:	
PCT No.: PCT/EP2004/012230	:	
Int. Filing Date: 28 October 2004	:	DECISION
Priority Date: 31 October 2003	:	
Attorney Docket No.: 930008-2208	:	
For: PHARMACEUTICAL ACTIVE-INGREDIENT- CONTAINING FORMULATION WITH COATING	:	

This is a decision on applicants' renewed petition under 37 CFR 1.47(a) filed 04 January 2008 and the submission filed 07 January 2008. The petition is DISMISSED as MOOT.

**BACKGROUND**

On 28 October 2004, applicants filed international application PCT/EP2004/012230, which designated the United States and claimed a priority date of 31 October 2003. A copy of the international application was communicated from the International Bureau to the USPTO on 12 May 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 01 May 2006 (30 April 2006 being a Sunday).

On 27 April 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a translation of the application into English.

On 26 August 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 21 February 2007, applicants filed a petition under 37 CFR 1.47(a) which was accompanied by, *inter alia*, a declaration signed by all of the inventors except for Thomas Rillmann, a letter from a Dr. Forstmeyer to Applicant's United States attorney, Ms. Massey Licata, dated 20 February 2007.

On 28 March 2006, a decision was mailed dismissing applicants' petition under 37 CFR

1.47(a) without prejudice. The decision indicated, *inter alia*, that applicant had failed to provide factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort. The decision set a two-month extendable period for reply.

On 17 July 2007, applicants filed a submission which was accompanied by, *inter alia*, a declaration of inventors signed by Thomas Rillmann.

On 05 September 2007, a decision was mailed dismissing applicants' petition under 37 CFR 1.47(a) as moot since a 37 CFR 1.497 declaration had been executed by all the joint inventors. The decision also indicated that the declaration of inventors signed by Thomas Rillmann filed 17 July 2007 was not in compliance with 37 CFR 1.497(a)-(b) since it did not identify all of the inventors and that a new declaration signed by Thomas Rillmann in compliance with 37 CFR 1.497(a)-(b) was required.

On 04 October 2007, applicants submitted a petition under 37 CFR 1.47(a) for non-signing inventor Thomas Rillman who purportedly would not sign a declaration listing all of the inventors. The petition was accompanied by, *inter alia*, a declaration of facts by Hubert Leger.

On 07 November 2007, a decision was mailed dismissing applicant's petition under 37 CFR 1.47(a) filed 04 October 2007 for failing to provide factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

On 04 January 2008, applicants filed a renewed petition under 37 CFR 1.47(a).

On 07 January 2008, applicants filed a submission including, *inter alia*, a declaration of inventors signed by all inventors.

#### DISCUSSION

Since a 37 CFR 1.497 declaration has been executed by all the joint inventors, the petition for status under 37 CFR 1.47(a) is moot. The application need not be returned to the Office of PCT Legal Affairs for any further consideration of the status under 37 CFR 1.47 and no such status should be indicated on this application file.

The declaration filed 07 January 2008 is not sufficient because it contains non-initialed alterations (page 3 of the declaration). 37 CFR 1.52(c). "The Office will not consider whether noninitialed and or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration." MPEP § 605.04(a). Item I.

#### CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** as **MOOT**.

Applicant is hereby given the time limit of **TWO (2) MONTHS** from the mail date of this communication in order to file a proper oath or declaration. Extensions of time under 37 CFR 1.136(a) are available.

**Failure to timely file a proper response to this decision in a timely manner will result in abandonment of the application with regards to national stage prosecution in the United States.**

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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